

Amendment No. 4 to HB2797

Buck
Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 3179

House Bill No. 2797*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 71-6-107, is amended by deleting subdivision (a)(4) and substituting instead the following:

(4)

(A) The adult alleged to be in need of protective services and any person to whom the adult is lawfully married, if known and reasonably available, must be served with a copy of the complaint at least forty-eight (48) hours prior to the hearing, unless for good cause shown, a shorter time is allowed by the court. The adult and the adult's spouse have a right to be present and represented by counsel at the hearing. Failure to serve a copy of the complaint on a lawful spouse of the adult, if such spouse is not known or is not reasonably available as determined by the court, shall not prevent the provision of protective services, as ordered by the court, that may be necessary to prevent the adult from suffering imminent harm.

(B) If the adult alleged to be in need of protective services is indigent or, in the determination of the judge or chancellor, lacks capacity to waive the right to counsel, then the court shall appoint counsel for the adult alleged to be in need of protective services.

(C) If the adult alleged to be in need of protective services is indigent, court costs and the cost of representation of such adult shall be borne by the state; otherwise such costs shall be borne by the adult. The state shall not be liable for the cost of counsel or court costs for the spouse of the adult; provided, however, if the court finds

that the department or an agency acting under subdivision (7) has, without good cause, failed to serve a copy of the complaint on the lawful spouse of the adult, the court may assess attorneys fees for the spouse of the adult and court costs to the department or agency acting under subdivision (7) not to exceed a total of two thousand dollars (\$2,000.00). Provided, however, the court may exceed the two thousand dollar (\$2,000.00) limit upon making a specific finding of fact that the failure of the department or an agency to serve the complaint resulted in financial hardship upon the spouse or adult in excess of two thousand dollars (\$2,000.00) and that the interests of justice require that the limit be exceeded in the particular case.

SECTION 2. Tennessee Code Annotated, Section 71-6-107, is amended by designating the existing language of subdivision (a)(6) as (a)(6)(A) and by adding the following:

(B) The court in its order may authorize the temporary guardian to exercise a limited power of attorney over any accounts the adult has in a bank, credit union, or other financial institution. The temporary guardian so designated shall deliver a copy of the order of the court to the financial institution prior to taking any action with regard to the accounts. The limited power of attorney shall authorize the temporary guardian to withdraw money from or freeze or unfreeze the account.

(C) Concurrent with the order of the court appointing a temporary guardian, the court shall issue a subpoena directed to the financial institution in compliance with the Financial Records Privacy Act, Tennessee Code Annotated, Title 45, Chapter 10, requesting the names of any co-owner or additional authorized signatories on such accounts, unless the temporary guardian has actual knowledge of any co-owners or additional authorized signatories. Upon receipt of the response to the subpoena, or upon actual knowledge of such co-owners or additional authorized signatories, the temporary guardian shall send a copy of such order to any person who is a co-owner of or authorized signatory on the deposit account within ten (10) days of receiving the names of the co-owners

or signatories. Nothing herein shall preclude the temporary guardian from making immediate expenditures from the accounts of the adult necessary to provide protective services for the adult in imminent danger, as defined in this part, pending the response by the co-owners or other signatories to the accounts.

(D) If the court finds that the temporary guardian has, without good cause, failed to provide a copy of such order under this subdivision (6) to the co-owner or additional authorized signatory on such deposit account, the court may assess attorneys' fees for the benefit of the co-owner or additional authorized signatory or court costs associated with such failure of the department or the temporary guardian; provided such fees and court costs shall not exceed a total of two thousand dollars (\$2,000.00). Provided, however, the court may exceed the two thousand dollar (\$2,000.00) limit upon making a specific finding of fact that the failure of the department or an agency to serve the complaint resulted in financial hardship upon the spouse or adult in excess of two thousand dollars (\$2,000.00) and that the interests of justice require that the limit be exceeded in the particular case.

SECTION 3. Tennessee Code Annotated, Section 71-6-107(b), is amended by deleting subdivision (2) in its entirety and by substituting instead the following new language:

(2)

(A) The adult alleged to be in need of protective services and any person to whom the adult is lawfully married, if known and reasonably available, must be served with a copy of the complaint at least ten (10) days prior to the hearing, unless for good cause shown, a shorter time is allowed by the court. The adult and the adult's spouse have a right to be present and represented by counsel at the hearing. Failure to serve a copy of the complaint on a lawful spouse of the adult, if such spouse is not known or is not reasonably available as determined by the court, shall not prevent the provision of protective services to the adult, as ordered by the court.

(B) If the adult alleged to be in need of protective services is indigent or, in the determination of the judge or chancellor, lacks capacity to waive the right to counsel, then the court shall appoint counsel for the adult alleged to be in need of protective services.

(C) If the adult alleged to be in need of protective services is indigent, court costs and the cost of representation of such adult shall be borne by the state; otherwise such costs shall be borne by the adult. The state shall not be liable for the costs of counsel or court costs for the spouse of the adult; provided, however, if the court finds that the department or an agency acting under subdivision (7) has, without good cause, failed to serve a copy of the complaint on the lawful spouse of the adult, the court may assess attorneys fees for the spouse of the adult and court costs to the department or agency acting under subdivision (7) not to exceed a total of two thousand dollars (\$2,000.00). Provided, however, the court may exceed the two thousand dollar (\$2,000.00) limit upon making a specific finding of fact that the failure of the department or an agency to serve the complaint resulted in financial hardship upon the spouse or adult in excess of two thousand dollars (\$2,000.00) and that the interests of justice require that the limit be exceeded in the particular case.

SECTION 4. This act shall take effect July 1, 2008, the public welfare requiring it.